

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF ALABAMA SOUTHERN DIVISION

Benny Nowell and *
Ronnie Nowell
doing business
as Nowell Farms *
Plaintiffs

vs.

*Case No. 1:19-cv-00172-SRW

GEORGE ERVIN "SONNY" PERDUE, III *
UNITED STATES SECRETARY OF
AGRICULTURE, THE UNITED STATES
DEPARTMENT OF AGRICULTURE, *
DEFENDANT

AMENDED COMPLAINT

1. Jurisdiction of the United States District Court
of the Middle District of Alabama, Southern Division is
invoked pursuant to 28 USCS 1331, Federal Question
Jurisdiction, 7 USCS 6999 and 28 USCS 2412.

2. Nowell Farms, is the name of a farming business
located in Henry County, Alabama operated by Benny Nowell
and Ronnie Nowell, who collectively are referred to as
Nowell Farms throughout the complaint. Those things made
the basis of this complaint arise from activities occurring
within the Middle District of Alabama, Southern Division.

3. Nowell Farms has received a favorable ruling from
the United States Department of Agriculture Office of the

Secretary, (the agency), National Appeals Division, (at times NAD). Notwithstanding the favorable ruling, facts of which will be set out with more particularity below, Nowell Farms has not received payment because the agency has not implemented the ruling as required by law.

3. In 2017 (the agency) Nowell Farms was a grower of row crops including watermelons. Plaintiff suffered losses to its watermelon crop due to excessive moisture and made a claim for benefits under the Noninsured Crop Disaster Assistance Program administered by the agency. Nowell Farms was denied benefits by the agency. The plaintiff appealed the decision of the agency to its National Appeals Division.

4. The defendant is the United States Secretary of Agriculture, the Honorable George Ervin "Sonny" Perdue, III, United States Department of Agriculture, (the Agency), bearing the legal responsibility to implement the decision of the National Appeals Division within 30 days unless a timely request for review is filed which did not occur. The agency has not implemented the decision as of the date of this filing.

5. The amount that is due Nowell Farms is readily calculable by the agency. Nowell Farms has a clear legal right to the relief sought. Since Nowell Farms is entitled, pursuant to the Non-Insured Crop Disaster Assistance Program (NAP), to a readily calculable amount for its losses there is no need to remand this matter to the agency prior to judgment being entered.

6. The plaintiff filed a timely appeal from the agency's reconsideration letter dated December 14, 2017 that denied benefits under the program. The administrative law judge found:

"Based on the evidence, the parties' arguments, and the applicable program rules, I conclude the Agency's decision is erroneous because the LA failed to comply with the Agency's loss adjustment rules, and Appellant did not leave marketable watermelons in the field." Appeal Determination Dated July 5, 2018, pg. 2.

No request for review has been filed by the agency, the period for filing a request for review has expired and the NAD ruling is final. The final ruling was entered on July 5, 2018.

7. The agency's failure to implement the final determination of the Administrative Law Judge even though more than thirty days has elapsed from the effective date

of the final determination and the agency's behavior in not paying the claim under the program is arbitrary, capricious and contrary to law.

Wherefore Plaintiff seeks an order:

- A. Enforcing the ruling of the Administrative Law Judge entered on 5th day of July 2018;
- B. That the Agency be required to calculate and provide the calculations of the benefits due Nowell Farms as a result of the ruling of the Administrative Law Judge;
- C. That the Agency be required to pay statutory interest on the sums due under the Ruling of the Administrative Law Judge;
- D. That the Court enter judgment for the benefits due as a result of the ruling of the Administrative Law Judge and interest.

S/Charles N. Reese
Charles N. Reese (REE010)
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CERTIFICATE OF SERVICE

I, Charles N. Reese, do hereby certify I have mailed a copy of the foregoing by first class mail postage prepaid to Hon. George Ervin "Sonny" Perdue, III, United States Department of Agriculture, 1400 Independence Avenue, Washington, D.C. 20250; Louis V. Franklin, Sr., Esq., United States Attorney for the Middle District of Alabama, 131 Clayton Street, Montgomery, Alabama 36104 and to Hon. William Pelham Barr, Attorney General of the United States, United States Department of Justice, 950 Pennsylvania Avenue N.W., Washington, D.C. 20530-0001 this the 27th day of March 2019.

S/Charles N. Reese
Charles N. Reese (REE010)